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5 Attorneys for Plaintiffs  
**MARGARET KEIPER and DAIL**  
6 **KEIPER, JR., Individually and as the**  
7 **Successors-in-Interest to DAIL**  
**KEIPER, SR., Deceased**

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10  
11 MARGARET KEIPER, ET AL.  
12 MICHAEL CHESTNUT, ET AL.  
JESUS AGUILAR, ET AL.

13 Plaintiffs,

14 v.

15 VICTOR VALLEY TRANSIT  
AUTHORITY, a Governmental entity;  
16 DINORAH AGUILAR; TRANSEV  
SERVICES, INC., A Maryland  
17 Corporation; VEOLIA  
TRANSPORTATION SERVICES,  
18 INC., A Corporation; STEVEN KILTY;  
FBN TRANSPORTATION, LLC, a  
19 Wisconsin Limited Liability Company;  
MARDAN TRANSPORTATION LLC,  
20 a Wisconsin Limited Liability  
Company; AMSTON SUPPLY, INC., a  
21 Wisconsin Corporation;, and DOES 1  
through 100, inclusive,

22 Defendants.  
23

24 AND ALL RELATED ACTIONS  
25  
26  
27  
28

**Case No. EDCV 15-00703-BRO SPx);**  
**EDCV 15-00762-BRO SPx);**  
**EDCV 15-01481-BRO (SPx)**  
**EDCV 15-02380-BRO (SPx)**

**JOINT RULE 26(f) SCHEDULING  
CONFERENCE REPORT**

Judge: Hon. Beverly Reid O'Connell  
Date: January 25, 2016  
Time: 1:30 p.m.  
Crtrm.: 14

Trial Date: None

Pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 26-1 and this Court's October 16, 2015, Order Setting Scheduling Conference (the "Order"), a teleconference was held on December 11, 2015, by and between Martin D. Gross for Plaintiffs Margaret Keiper and Dail Keiper, Jr.; Kevin Elder for Jesus Aguilar, Naiomi Bridgette, Jermaine Ratliff; Douglas Welebir for Michael Chestnut, Misiona Tusieseina, Pedro Miranda; James R. Tedford II, for Dinorah Aguilar; for Defendants: Jeremy R. Alberts for Defendants Victor Valley Transit Authority, Dinorah Aguilar, Transdev Services, Inc., and Veolia Transportation Services, Inc.; Daniel E. Kenney for Defendant; Connie Benson for Defendants FBN Transportation, LLC, Steven Kilty, and Mardan Transportation, LLC; Amston Supply, Inc. and Glen F. Dorgan for Defendant United States America.

During the meeting of counsel the Parties discussed the nature and basis of their respective claims and a discovery plan. The Parties have exchanged their initial disclosures, and submit this Joint Report.

#### **A. STATEMENT OF THE CASE**

On June 2, 2014 a bus traveling toward Fort Irwin collided with a parked tractor-trailer rig. The bus was owned by Defendant Victor Valley Transit Authority (VVTa). The bus driver, Defendant Dinorah Aguilar (Dinorah A.) was an employee of Defendant Transdev Services, Inc. (Transdev) and/or Defendant Veolia Transportation Services, Inc. (Veolia) who were under contract with Defendant VVTa for the operation, maintenance, and service of the public transportation provided by VVTa. Collectively referred to as "Bus Defendants".

The incident occurred on Fort Irwin Truck By-Pass Road which runs adjacent to Fort Irwin Road just outside of the Fort Irwin National Training Center gate, Fort Irwin, County of San Bernardino, State of California. The "Fort Irwin Truck By-Pass Road" is a two lane northbound only road leading to Fort Irwin and just outside Fort Irwin's main gate. Defendant Steven Kilty (Kilty) who was operating under the motor carrier authority of Defendant FBN Transportation, LLC (FBN) had brought

1 his tractor-trailer rig to a stop in the number two lane of the Fort Irwin Truck By-  
2 Pass Road as directed by the Department of Army or its designated representative.  
3 The tractor was owned by Defendant Mardan Transportation, LLC (Mardan) and the  
4 trailer was owned by Defendant Amston Supply, Inc. (Amston). Collectively  
5 referred to as “Tractor-Trailer Defendants”.

6 Plaintiffs, passengers on the bus, filed Complaints for personal injury against  
7 the Bus Defendants, as well as the Tractor-Trailer Defendants. Three lawsuits were  
8 filed and consolidated through stipulation and a Court order of October 16, 2015.

9 The Bus Defendants filed a cross-claim for equitably indemnity and  
10 contribution against the Tractor-Trailer Defendants, as well as a third party  
11 complaint against the United States of America (Department of Army, et al.). Some  
12 of the Tractor-Trailer Defendants have filed a cross-claim against the Bus  
13 Defendants for indemnification and contribution. The Tractor-Trailer Defendants  
14 have filed a third party complaint against the United States of America (Department  
15 of Army, et al.).

## 16 **B. SUBJECT MATTER JURISDICTION**

17 Plaintiffs contend that this Court has subject matter jurisdiction only because  
18 the Bus Defendants have filed a third party complaint against the United States of  
19 America (USA). This Third Party Complaint is the basis for the removal of this  
20 matter to Federal Court. Plaintiffs contend that the Truck By-Pass Road was  
21 constructed pursuant to a policy created by the Department of Army for use by  
22 public transportation buses and tractor-trailer rigs visiting Fort Irwin. Plaintiffs  
23 further contend that Defendant USA has an immunity pursuant to the discretionary  
24 function exception of the Federal Tort Claims Act. Defendant USA has filed a Rule  
25 12(b)(1) motion for dismissal arguing that under the discretionary function  
26 exception they are immune from any and all liability scheduled for January 25,  
27 2016. Plaintiffs contend that once this motion is filed and heard, subject matter  
28 jurisdiction will be lost and this matter will be remanded to State Court.

1 Defendants dispute Plaintiffs' contentions above and assert that subject matter  
2 jurisdiction is proper pursuant to 28 U.S.C. Section 1331 (Federal question).  
3 Defendants also claim that jurisdiction exists under the Federal Enclave Doctrine.  
4 Defendants also wish to learn the identity and contact information of any contractors  
5 hired by the USA which may have been involved in the accident or the activities  
6 shortly before the accident, including any security contractors which may administer  
7 security at and beyond the gate to the fort. If such contractors exist, Defendants  
8 contend that they are not covered by any applicable exception to FTCA immunity.

9 **C. LEGAL ISSUES**

10 Plaintiffs assert the key legal issues raised in this case include:

11 1. Subject Matter Jurisdiction once the Rule 12(b)(1) motion is filed by  
12 Defendant USA on Bus Defendants' third party complaint is ruled upon;

13 2. Motions for remand to State Court;

14 3. Liability as between Bus Defendants, Tractor-Trailer Defendants, and  
15 Defendant USA. The Traffic Collision Report and investigation performed by both  
16 the Department of Army and California Highway Patrol have not yet been  
17 concluded and/or released. Essential and necessary information is contained within  
18 these reports including: (1) Identity of all bus passengers/witnesses; (2) videotapes  
19 of the accident from cameras located in the bus, (3) the ECM (Black box) data has  
20 not been released; and (4) various information concerning US Army procedures for  
21 truck and bus entry to Fort Irwin.

22 4. Defendants Mardan and Amston are likely to present motions based on  
23 the Graves Amendment, as they contend they only owned or leased the tractor-  
24 trailer rig at issue.

25 The United States Army and/or the California Highway Patrol have  
26 reportedly initiated a criminal investigation arising out of the alleged actions and/or  
27 inactions of Defendants Dinorah A. and Kilty. The status of the purported criminal  
28 investigation is unknown.

1 Plaintiffs contend that, at this time, it is undetermined whether and to what  
 2 extent the criminal investigation will interfere with civil discovery issues due to  
 3 potential assertions of the Fifth Amendment Privilege against self-incrimination.

4 Defendants dispute Plaintiffs' contention and assert that the presently  
 5 unresolved criminal investigation will interfere with civil discovery issues due to the  
 6 investigating agencies withholding of the essential and necessary information  
 7 identified in Section C:3 above. Defendants further assert that the presently  
 8 unresolved criminal investigation will interfere with civil discovery issues due to  
 9 Defendants Dinorah A. and Kilty's anticipated assertion of the Fifth Amendment  
 10 Privilege against self-incrimination.

#### 11 **D. PARTIES**

12 Keiper Plaintiffs: Margaret Keiper and Dail Keiper, Jr. ("Plaintiffs"),  
 13 individually and as the Successors-in-Interest to Dail Keiper, Sr., Deceased.

14 Chestnut Plaintiffs: Michael Chestnut, Misiona Tusieseina, Pedro Miranda

15 Aguilar Plaintiffs: Jesus Aguilar, age 33, Naiomi Bridgette, age 28, and her  
 16 son, Jermaine Ratliff.

17 Plaintiff Dinorah Aguilar.

18 Bus Defendants: Victor Valley Transit Authority ("Victor Valley"), Dinorah  
 19 Aguilar ("Aguilar"), Transdev Services, Inc. ("Transdev"), Veolia Transportation  
 20 Services, Inc. ("Veolia").

21 Tractor-Trailer Defendants: Steven Kilty ("Kilty"), FBN Transportation, LLC  
 22 ("FBN"), Mardan Transportation LLC ("Mardan"), and Amston Supply, Inc.  
 23 ("Amston").

24 Third-Party Defendant: The United States of America ("USA").

#### 25 **E. DAMAGES**

26 Dail Keiper, Sr. was killed as a result of said accident. The full extent of  
 27 damages as to Plaintiffs Margaret Keiper and Dail Keiper, Jr., is still undetermined.

28 Plaintiff Jesus Aguilar lost his right upper extremity. Plaintiff Naiomi

1 Bridgette suffered from broken bones requiring the placement of a metal rod.  
2 Plaintiff Jermaine Ratliff suffered from what appears to be soft tissue injuries, the  
3 nature and extent of which are unknown at this time.

4 Plaintiffs Michael Chestnut, Misiona Tusieseina, Pedro Miranda:

5 Chestnut :

6 Facial Lacerations and abrasions and residual scarring.

7 Emotional distress.

8 Tusieseina:

9 Fractures of L1 & L2 – transverse process (minimally displaced)

10 Rib fracture: left 12th

11 Contusion lower back

12 Hematoma over coccyx (from L-4 to S-4)

13 Hematoma left buttock with tear above perineum area

14 Severe low and mid-back pain.

15 Pain left wrist

16 Miranda:

17 Intrapelvic protrusion of acetabulum Pelvic/Hip/Femur

18 Open reduction internal fixation of left acetabular fracture

19 Fracture dislocation of left Pelvis

20 Shattered left acetabulum (through the left acetabulum and superior left pubic ramus  
21 with associated medial migration of the femoral head; together with fractures of  
22 both the anterior and posterior columns; displacement of comminuted fracture  
23 fragments;

24 impaction fracture of the left femoral head; fracture fragments in the left  
25 hip joint) with associated hematoma and retroperitoneal

26 hemorrhage (pelvic hematoma with mass effect on urinary bladder);

27 Injury to left internal iliac artery.

28 Laceration of muscle, fascia, tendon of post muscle group at thigh level

1 Surgical removal of deep buried wire debris from left femur

2 Irrigations and debridement of left thigh down to fascia

3 Ongoing abnormalities of Pelvis and Hips; Pain in hip; reduce Range of Motion.

4 Plaintiff Dinorah Aguilar:

5 Laceration to right knee. Pain to right knee. Right shoulder: Torn  
6 supraspinatus tendon, torn subscapularis tendon, torn rotator cuff, torn labrum.

7 Bus Defendants sustained property damage and have incurred expenses, costs  
8 of suit, legal fees and other damages as a result of the alleged actions/inactions of  
9 the Tractor-Trailer Defendants and Third-Party Defendant USA.

#### 10 **F. INSURANCE**

11 There is insurance under the Defendants' automobile/truck policies of  
12 insurance.

#### 13 **G. MOTIONS**

14 Defendants Mardan and Amston anticipate filing under the so called "Graves  
15 Amendment" pursuant to 49 U.S.C. § 30106(a).

#### 16 **H. MANUAL FOR COMPLEX LITIGATION**

17 The Parties do not view this matter as complex and the Manual for Complex  
18 Litigation (current edition) should not be required or utilized to facilitate the  
19 management of this case.

#### 20 **I. STATUS OF DISCOVERY**

21 The Bus Defendants have served written discovery on the Trucking  
22 Defendants and Plaintiffs. The Trucking Defendants have served written discovery  
23 on the Bus Defendants. The Parties will continue discovery following the Rule 26(f)  
24 Conference. Discovery is needed on liability, causation and the extent of Plaintiffs'  
25 damages.

#### 26 **J. DISCOVERY PLAN**

27 The Parties agree to the timing, form, and other requirements for disclosures  
28 under Rule 26(a). Discovery will be needed on the incident and investigation of the



1 accident which occurred on June 2, 2014, as well as Decedent's injuries and  
2 damages and Plaintiffs' damages. Depositions of all incidental parties will be held  
3 prior to the discovery cut-off date provided by the Court.

4 The Bus Defendants and the Tractor-Trailer Defendants believe that, in the  
5 absence of the investigative materials set forth above in Section C:3 the suggested  
6 dates for discovery cut-off, expert disclosure and motion filing dates is premature.

7 The United States also contends that it is premature to set discovery cut-off,  
8 expert disclosure and motion filing dates, because the issue of subject matter  
9 jurisdiction has not yet been resolved. The United States may move for a formal  
10 stay of discovery until the subject matter jurisdiction issues are resolved.

#### 11 **I. Discovery Phases**

12 The Parties do not propose that discovery should be conducted in phases.

#### 13 **II. Electronically Stored Information**

14 The Parties do not anticipate issues relating to the disclosure or discovery of  
15 electronically stored information at this time. The Parties will work to agree on  
16 specifications regarding the production of electronically stored information, and do  
17 not propose any changes in the limitations on discovery.

#### 18 **III. Protective Order and Privilege Logs**

19 The Bus Defendants anticipate seeking a protective order relating to certain  
20 confidential and proprietary information, including but not limited to, the Bus  
21 Defendants drivers training manuals.

22 The United States intends to file a motion seeking a protective order to  
23 facilitate the disclosure of investigative materials.

#### 24 **IV. Adherence to Discovery Rules**

25 The Parties agree that the limitations on discovery imposed by both the  
26 Federal rules of Civil Procedure of the Local Rules of the Central District of  
27 California should apply and no other limitations are necessary at this time.

28



1           **K.     DISCOVERY CUT-OFF**

2           Plaintiffs contend that a July 25, 2016 date should be implemented by this  
3 Court.

4           The Bus Defendants and the Tractor-Trailer Defendants believe that, in the  
5 absence of the investigative materials set forth above in Section C:3 the suggested  
6 dates for discovery cut-off, expert disclosure and motion filing dates is premature.

7           The United States believes that, pending resolution of subject matter  
8 jurisdiction issues, discovery should be stayed and dates for discovery cut-off,  
9 expert disclosures and motion filing dates is premature.

10          **L.     EXPERT DISCOVERY**

11          Plaintiffs contend that September 26, 2016 should be the expert disclosure  
12 date.

13          The Bus Defendants and the Tractor-Trailer Defendants believe that, in the  
14 absence of the investigative materials set forth above in Section C:3 the suggested  
15 dates for discovery cut-off, expert disclosure and motion filing dates is premature.

16          The United States believes that, pending resolution of subject matter  
17 jurisdiction issues, discovery should be stayed and dates for discovery cut-off,  
18 expert disclosures and motion filing dates is premature.

19          **M.     DISPOSITIVE MOTIONS**

20          The United States has filed its Motion to Dismiss the Bus Defendants' and  
21 Truck Defendants' third party complaints.

22          Plaintiffs anticipate renewing their motion to remand if Defendant USA's  
23 motion to dismiss is granted.

24          As indicated previously, it is anticipated that Defendants Tractor-Trailer rig  
25 will file a motion based upon the Graves Act. Plaintiffs propose that any and all  
26 dispositive motions be filed by no later than July 1, 2016. The Bus Defendants and  
27 the Tractor-Trailer Defendants believe that, in the absence of the investigative  
28 materials set forth above in Section C:3 the suggested dates for discovery cut-off,

1 expert disclosure and motion filing dates is premature. The United States believes  
 2 that, pending resolution of subject matter jurisdiction issues, it is premature to set  
 3 motion filing deadlines.

#### 4 **N. ALTERNATIVE DISPUTE RESOLUTION (ADR)**

5 The parties have not held settlement discussions up to this point. The  
 6 Plaintiffs would be amenable to select Troy Roe as a private mediator. The Bus  
 7 Defendants desire to select a different private mediator and propose either Lynn  
 8 Frank or Judge Michael Hogan.

9 The Tractor Trailer Defendants believe that mediation will be meaningless  
 10 unless the statute of limitations has expired and/or all potential claimants have filed  
 11 suit.

#### 12 **O. TRIAL ESTIMATE**

13 The Plaintiffs estimate the trial will last 12 days if the trials are consolidated.  
 14 Individual plaintiff cases are estimated to be 5 days. The Bus Defendants anticipate  
 15 the trial will last 12-15 days if the trials are consolidated.

16 The United States contends that, subject to the motion to dismiss, all FTCA  
 17 claims asserted against it must be resolved by court trial, not jury trial. If the trials  
 18 are consolidated, the United States anticipates that the court trial of the claims  
 19 against the United States may require an additional 2-3 court days

#### 20 **P. TRIAL COUNSEL**

21 Martin D. Gross, as Lead Counsel for Keiper Plaintiffs;

22 Kevin Elder as Lead Counsel for Jesus Aguilar;

23 Robert Brannen as lead counsel for Plaintiffs Naomi Bridgett and Jermaine  
 24 Ratliff:

25 Douglas Welebir as Lead Counsel for Plaintiffs Michael Chestnut, Misiona  
 26 Tusieseina, Pedro Miranda:

27 James R. Tedford II, as Lead Counsel for Plaintiff Dinorah Aguilar:

28 Jeremy R. Alberts as Lead Counsel for Defendants Transdev, Veolia, VVTA

1 and Dinorah Aguilar.

2 John "Jack" Williamson as lead counsel for Defendants Steven Kilty, FBN  
3 Transportation, LLC, Amston:

4 Katherine L. Parker, Valerie E. Torres, and Glen F. Dorgan for Defendant  
5 United States America.

6 **Q. INDEPENDENT EXPERT OR MASTER:**

7 The parties anticipate retaining an independent expert for the limited purpose  
8 of downloading the Electronic Control Module data from the subject bus.

9 **R. TIMETABLE**

10 See attached form.

11 **S. OTHER ISSUES:**

12 The parties have not identified any other issues requiring the Court's attention  
13 at this time.

14  
15 DATED: January 8, 2016

Respectfully submitted,

16 **LAW OFFICES OF MARTIN D. GROSS**

17  
18 By: /s/ Martin D. Gross

19 Martin D. Gross

20 Attorney for Plaintiffs

21 MARGARET KEIPER and DAIL

22 KEIPER, JR., Individually and as the

23 Successors-in-Interest to Dail Keiper, Sr.,

24 Deceased  
25  
26  
27  
28

1 DATED: January 8, 2016

**PENNEY AND ASSOCIATES**

2  
3 By: /s/ Kevin Elder

4 Kevin Elder

5 Attorney for Plaintiffs Jesus Aguilar,  
6 Naomi Bridgett and Jermaine Ratliff

7 DATED: January 8, 2016

**WELEBIR TIERNEY & WECK**

8  
9 By: /s/ Douglas Welebir

10 Douglas Welebir

11 Attorney for Plaintiffs Michael Chestnut,  
12 Misiona Tusieseina, Pedro Miranda

13 DATED: January 8, 2016

**TEDFORD & ASSOCIATES**

14  
15 By: /s/ James R. Tedford, II

16 James R. Tedford, II

17 Attorney for Plaintiff Dinorah Aguilar

18 DATED: January 8, 2016

**WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC.**

19  
20 By: /s/ Jeremy R. Alberts

21 Jeremy R. Alberts

22 Attorneys for Defendants

23 VICTOR VALLEY TRANSIT

24 AUTHORITY, DINORAH AGUILAR,

25 TRANSDEV SERVICES, INC., VEOLIA

26 TRANSPORTATION SERVICES, INC.

1 DATED: January 8, 2016

**WILLIAMSON LAW GROUP**

2  
3 By: /s/ John Williamson

4 John S. Williamson

5 Attorneys for Defendants and Cross-  
Claimants,

6 STEVEN KILTY and FBN  
7 TRANSPORTATION, LLC,  
8 AMSTON SUPPLY

9 **FILER'S ATTESTATION**

10 Pursuant to L.R. 5-4.3.4(2)(i), I attest that the other signatories listed above  
11 provided their authority and concurrence to file the document and place their  
12 signature on the document set forth above.

13 By: /s/ Martin D. Gross

14 Martin D. Gross  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 8, 2016, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice, and I hereby certify that I caused the foregoing document or paper to be mailed via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 8, 2016

Respectfully submitted,

**LAW OFFICES OF MARTIN D. GROSS**

By: /s/ Martin D. Gross

Martin D. Gross

Attorney for Plaintiffs

MARGARET KEIPER and DAIL

KEIPER, JR., Individually and as the

Successors-in-Interest to Dail Keiper, Sr.,

Deceased

**EXHIBIT A****SCHEDULE OF PRETRIAL AND TRIAL DATES**

Case Name: MARGARET KEIPER, et al., v. VICTOR VALLEY TRANSIT  
AUTHORITY, et al

Case No.: 5:15-cv-00703-BRO-SP

<b>Matter</b>	<b>Time</b>	<b>Weeks Before Trial</b>	<b>Plaintiff(s) Request</b>	<b>Defendant(s) Request</b>	<b>Court Order</b>
<b>Trial (Jury: X) Estimated length: 15 days</b>	8:30 am		October 3, 2016		
<b>[Jury trial] Hearing on Motions in Limine</b>		-1	September 26, 2016		
<b>[Court trial] File Findings of Fact and Conclusions of Law; Hearing on Motions in Limine</b>		-1			
<b>Hearing on Disputed Jury Instructions</b>	1:30 pm	-2	September 19, 2016		
<b>Pretrial Conference; Proposed Voir Dire Qs Lodged and Agreed-to Statement of Case</b>	3:00 pm	-5	September 6, 2016		
<b>Motions in Limine to be filed;</b>		-6	August 29, 2016		



<b>Matter</b>	<b>Time</b>	<b>Weeks Before Trial</b>	<b>Plaintiff(s) Request</b>	<b>Defendant(s) Request</b>	<b>Court Order</b>
<b>Lodge Pretrial Conf. Order; File Memo of Contentions of Fact and Law; Exhibit &amp; Witness Lists; File Status Report re Settlement; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.</b>		-7	August 22, 2016		
<b>Last date to conduct Settlement Conference</b>		-9	August 8, 2016		
<b>Last day for hearing motions</b>	1:30 pm	-10	August 1, 2016		
<b>Discovery cut-off [Note: Expert disclosure no later than 70 days prior to this date.]</b>		-11	July 25, 2016  September 26, 2016		
<b>Last Day to Amend Pleadings or Add Parties</b>					